

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

Motion GRANTED.
Reply to be filed by
7/2/10.

DONALD CHILDS and DORIS CHILDS

)

Plaintiffs,

)

v.

)

HSBC MORTGAGE SERVICES, INC.
(an Illinois Corporation),

)

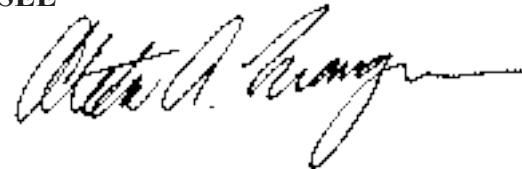
Defendant.

)

CASE NO.: 3:10-cv-0242

JURY DEMAND

JUDGE TRAUGER



HSBC MORTGAGE SERVICES, INC.'S MOTION FOR LEAVE

Pursuant to Local Rule 7.01(b), HSBC Mortgage Services, Inc. submits this Motion for Leave to File a Reply to Plaintiffs' Response in Opposition to HSBC's Motion to Dismiss. (Doc. 8).

8). In support of this Motion, Defendants state as follows:

1. By virtue of the Motion to Amend (Doc. 9) and the First Amended Complaint (Doc. 9-1), Plaintiffs concede that the original complaint in this action was factually deficient and should be dismissed. However, HSBC renews its Motion to Dismiss as to the causes of action stated in the Amended Complaint. Plaintiffs' Amended Complaint makes only minor, superficial changes, yet still fails to state claims upon which relief can be granted.

2. Despite the labels to the contrary, the facts in the Amended Complaint state a cause of action for breach of contract. (*See* Doc. 9-1, ¶ 13 ("This amount was in excess of the contractual amount owed by Plaintiffs"). The gravamen of the Amended Complaint is for breach of contract as Plaintiffs' claim they were contractually obligated to pay one amount, and HSBC breached the agreement by charging them another. Because Plaintiffs did not previously